

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JAN 19 2024

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

STERLING AND WILSON SOLAR  
SOLUTIONS, INC., a Delaware corporation,

Plaintiff-Appellee,

v.

FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND, an Illinois insurance  
company; ZURICH AMERICAN  
INSURANCE COMPANY, an Illinois  
insurance company,

Defendants-Appellees,

v.

CONTI LLC, Proposed Intervenor,

Movant-Appellant.

No. 23-35558

D.C. No. 1:22-cv-03076-SAB  
Eastern District of Washington,  
Yakima

ORDER

Before: WARDLAW, PAEZ, and NGUYEN, Circuit Judges.

The motion to extend time to file a response to the motion to stay district court proceedings (Docket Entry No. 14) is granted. The response has been filed.

The motion to dismiss this appeal for lack of jurisdiction (Docket Entry No. 15) is denied without prejudice to renewing the arguments in the answering brief. *See Nat'l Indus. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982) (merits panel may consider appellate jurisdiction despite earlier denial

of motion to dismiss).

The motion to stay district court proceedings (Docket Entry No. 13) is denied. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (defining standard in the context of staying lower court order or judgment).

The opening brief has been filed. The answering brief is due February 20, 2024. The optional reply brief is due within 21 days of service of the answering brief.